

Decision 00-11-037 November 21, 2000

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Global Photon Systems, Inc. and Global West Network Inc. for authority to modify their Certificates of Public Convenience and Necessity to Permit Construction of Specific Telecommunications Facilities.

Application 00-06-002
(Filed June 2, 2000)

O P I N I O N

I. Summary

Global Photon Systems, Inc., and its subsidiary Global West Network, Inc., (collectively “Applicants”) seek modification of their operating certificates in order to obtain approval for construction of an undersea and land-based fiber-optic telecommunications network (the “Project”). The State Lands Commission (SLC) acted as Lead Agency in preparing an Environmental Impact Report (EIR) on the Project. On April 20, 2000, the SLC certified that the EIR had been prepared in accordance with the California Environmental Quality Act (CEQA), adopted a mitigation monitoring program for the Project, and determined that “the project, as approved, will not have a significant effect on the environment.”¹ The application is unopposed. Our order today grants the application with the condition that applicants’ must obtain all necessary permits for the Project and

¹ See A.00-06-002, Exhibit 1, at p. 6.

must petition to modify this decision should the route or construction activities for the Project subsequently change.

II. Background

On November 24, 1998, the Commission issued Decision (D.) 98-11-073, by which it granted a certificate of public convenience and necessity (CPCN) to Global Photon Systems, Inc. (U-6090-C), to operate as a facilities-based carrier providing interLATA and intraLATA services in California.² On June 22, 1999, the Commission issued D.99-06-076 by which it granted similar approval to Global West Network, Inc. (U-6194-C), a wholly owned subsidiary of Global Photon Systems. Both applicants, classified as non-dominant interexchange carriers, were eligible for and used the registration process established by the Commission to obtain their CPCNs.

On June 2, 2000, applicants applied for modification of their CPCNs to permit construction of an undersea and terrestrial fiber optic telecommunications network. In accordance with Rule 17.1 of the Commission's Rules of Practice and Procedure, applicants submitted as their Proponent's Environmental Assessment (PEA) three volumes containing the final EIR performed by SLC and adopted by SLC on April 20, 2000. No protests were filed to this application. On July 7, 2000, applicants amended their application to provide further information indicating they had satisfied Commission Rule 17.1(f) regarding public notice of

² California is divided into 10 Local Access and Transport Areas (LATA) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services, revenues, and functions that relate to telecommunications originating in one LATA and terminating in another. "IntraLATA" describes services, revenues, and functions that relate to telecommunications originating and terminating within a single LATA.

the Draft and Final EIRs. On July 28, 2000, applicants further amended their application to provide certain financial information required by Commission Rules 18(f) and 18(g).

III. Overview of the Project

Applicants propose to construct a high capacity telecommunications system that would link major cities along the California coast from San Francisco to San Diego using both undersea and terrestrial fiber optic cable. The objective of the Project is to provide intrastate, interexchange high-capacity, or “large bandwidth,” digital services to transmit voice, data, video, cable TV, internet traffic, and other forms of digital data. The Project will also provide high capacity transport that directly connects existing and planned trans-Pacific cables in the San Luis Obispo region with Monterey and San Francisco to the north, and Santa Barbara, Los Angeles, and San Diego to the south. These trans-Pacific cables serve as an “International Gateway” connecting major cities on the west coast with Hawaii, Asia, Australia and South America.

The undersea portion of the cable would be buried along the California coastline, generally 3 to 12 miles offshore, and would come ashore at seven landing sites (San Francisco, La Selva Beach in Santa Cruz County, Sand City in Monterey County, San Luis Obispo, Santa Barbara, Manhattan Beach, and San Diego). At these landing sites, the sea cable would connect with terrestrial cable to directly link the cities of San Francisco, San Jose, Monterey, San Luis Obispo, Santa Barbara, Los Angeles, and San Diego. A portion of the undersea cable route lies within the Monterey Bay National Marine Sanctuary (Sanctuary) from near San Francisco to just north of Estero Bay (near Morro Bay and San Luis Obispo). The Project also requires two landings in the Monterey area to bypass a deep submarine canyon. The cable would land north of this deep undersea

canyon at La Selva Beach, bypass the submarine canyon on land, and return to sea south of the canyon near Sand City in Monterey.

The undersea cable is an unpowered, high capacity fiber optic cable that is just under one inch in diameter and transmits only light. The application states that because the cable is inert and does not transmit electricity, it has no electromagnetic interference interactions with other cables.³ The proposed terrestrial cable is standard fiber optic cable just under a half inch in diameter.⁴

According to the applicants, the Project is designed to alleviate congestion on the existing telecommunications network and allow for the expected future growth in traffic. At present, all north-south telecommunications traffic in California is carried on land-based cables. The applicants state that this offshore route is planned to provide route diversity and advance the theory an offshore route will offer added reliability to public communications in California's major cities in case of network disruption due to accident or natural disaster. However, since this is an uncontested proceeding we have not developed the record on this issue.

Applicants further state that they do not at this time seek approval of any construction not described in the EIR.

IV. Environmental Review

Because of the need to lease state-owned lands for the cable route, the SLC was one of the first agencies applicants approached to discuss permitting issues. In accordance with CEQA, SLC acted as Lead Agency to prepare an EIR for this

³ See Attachment A, pg. 2.

⁴ *Ibid.*

project. SLC consulted with the Commission as a responsible agency during its preparation of the EIR. The final EIR, attached to the application as Exhibit 2, analyzes the potential environmental impacts of the Project on air quality, marine and terrestrial biology, commercial and recreational fishing, cultural resources, geology, water quality, land and water use, transportation, utilities, paleontology, and noise. On April 20, 2000, SLC certified that the EIR had been prepared in accordance with CEQA, certified that it had reviewed and considered the information in the EIR, adopted a mitigation monitoring program, and determined, amongst other things, that “the project, as approved, will not have a significant effect on the environment.”⁵

According to the applicants, no entity has challenged the SLC’s certification of the EIR, the accuracy of its findings, or its approval of the Project within the thirty-day period established for such challenges under CEQA.⁶ We have reviewed and considered the information contained in the EIR prepared by SLC. Consistent with the requirements of Title 14 of the California Code of Regulations (the “CEQA guidelines”), we will adopt the findings as set forth by SLC in its April 20, 2000 order granting a permit for telephone right of way. The findings of the SLC and the mitigation monitoring program adopted by SLC are appended to this decision as Attachment A.⁷ We conclude that the Project, as approved by the SLC, and in consideration of the adopted EIR, will not have a significant effect on the environment.

⁵ See A.00-06-002, Exhibit 1, pg. 6.

⁶ See 14 CCR 15096(e).

⁷ Attachment A has two parts. Exhibit A contains the findings of the SLC. Exhibit B contains the mitigation monitoring program.

Applicants have stated in an amendment to their application that they are working diligently to obtain the permits and authorizations required by other state and federal agencies, including permits from the Sanctuary. The Sanctuary has indicated to applicants that an Environmental Impact Statement (EIS) under the National Environmental Policy Act may be required. We note this ongoing permitting and review process by the Sanctuary. This order does not change the requirement for applicants to obtain necessary construction permits from other agencies. If in the process of obtaining permits and authorizations for this Project the route or construction activities indicated in the EIR certified by SLC change, we will require applicants to file a petition to modify this decision to alert us to these potential changes and obtain this Commission's approval.

Applicants assert that SLC provided participating agencies and the public with opportunity to scope the issues to be analyzed and provide input and comment on the draft EIR in accordance with the CEQA guidelines. Commission Rule 17.1(f) requires that notice of draft and final EIRs be given by direct mail to certain public agencies, interested persons, and owners of land on which the project may be located, and owners of land adjacent thereto. Commission Rules also require the applicant to give notice to the general public by advertisement in newspapers of general circulation. In an amendment to the application, applicants assert that this rule only applies when the Commission acts as lead agency in the preparation of the draft and final EIR, which was not the case here. Despite this assertion, applicants provided information indicating which entities and individuals received notice of the draft and final EIR and provided information on the public notice of the preparation of the draft and final EIRs through newspaper publications. We find that the information provided

indicates that applicants have sufficiently fulfilled the notice requirements in Rule 17.1(f).

V. Public Convenience and Necessity

According to applicants, the Project will allow for the predicted high growth of future telecommunications traffic and alleviate congestion on the existing telecommunications networks. We agree. The Project should serve the public interest by increasing the capacity for telecommunications connections between California's major cities. Therefore, we find that the public convenience and necessity warrants construction of the Project as described in the EIR and as modified by SLC's adopted mitigation monitoring program. Again, we caution applicants that they must obtain all necessary permits and petition to modify this decision should any aspect of the project change while obtaining permits and authorizations for construction.

VI. Request for Confidentiality

Applicants requested confidential treatment for certain financial and operating information contained in four separate exhibits. Exhibit 4 contains an estimate of annual fixed and operating costs for the Project as required by Commission Rule 18(f). Exhibit 5 shows applicants' expected number of customers at the end of its first and fifth years of operation as required by Rule 18(j). Applicants also requested confidential treatment for Exhibits A and B to the second amendment to their application. Exhibit A contains further detail on the estimated cost to construct the Project in compliance with Rule 18(f). Exhibit B demonstrates applicants' ability to construct and operate their telecommunications facilities and contains current information on the applicants' financial condition and a description of the project financing as required by Rule 18(g).

The financial and operating information in Exhibits 4 and 5 of the initial application and Exhibits A and B of the second amendment to the application is an integral component of applicants' business plan and, if revealed, would place applicants at an unfair business disadvantage. We have granted similar requests for confidential treatment in the past and will do so here.

VII. Conclusion

We conclude that the proposed project, as modified by the mitigation monitoring program adopted by SLC, will not have a significant effect on the environment. We will therefore allow construction of the Project on the condition that applicants obtain all necessary permits and petition to modify this order should the route or construction activities for the Project subsequently change.

VIII. Procedural Matters

In Resolution ALJ 176-3040, dated June 8, 2000, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were necessary. Based on this record, our order today changes the preliminary determination and concludes that hearings are not necessary.

This is an uncontested matter in which the Commission grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

Findings of Fact

1. The Commission granted a CPCN to Global Photon Systems, Inc. in D.98-11-073 and to Global West Network, Inc. in D.99-06-076.
2. On June 2, 2000, applicants filed A.00-06-002 to modify their CPCNs to permit construction of specific telecommunications facilities.

3. Notice of A.00-06-002 appeared in the Commission's Daily Calendar on June 6, 2000.

4. No protests have been filed.

5. A hearing is not required.

6. SLC acted as Lead Agency to prepare an EIR for this project and consulted with the Commission as a responsible agency.

7. On April 20, 2000, SLC certified that the EIR had been prepared in accordance with CEQA, adopted a mitigation monitoring program, and determined that the Project, as approved, would not have a significant effect on the environment.

8. Applicants have sufficiently fulfilled the notice requirements of Rule 17.1(f).

9. The Project will alleviate congestion on existing telecommunications networks and increase the capacity for telecommunications connections between California's major cities.

10. The public convenience and necessity warrants construction of the Project as described in the EIR and as modified by the mitigation monitoring program appended to this decision in Attachment A.

11. The Monterey Bay National Marine Sanctuary has indicated to applicants that further review under the National Environmental Policy Act may be required.

12. Applicants requested that the financial information and estimates of the number of customers for its first and fifth years, filed with the application, be kept under seal.

13. Public disclosure of applicants' financial information and estimates of the number of customers, submitted with this application, would place applicant at an unfair business disadvantage.

Conclusions of Law

1. With the mitigation measures adopted by the SLC, applicants' proposed project will not have a significant effect on the environment.

2. If, in the process of obtaining permits and authorizations for this Project, the route or construction activities indicated in the EIR certified by SLC changes, applicants should file a petition to modify this decision to obtain approval for these changes.

3. The application should be granted, subject to the environmental requirements set forth in the findings and mitigation monitoring program of the SLC, attached to this order as Attachment A.

4. Applicants' request to file under seal financial information and estimates of the number of customers for its first and fifth years of operation should be granted for two years.

O R D E R

IT IS ORDERED that:

1. Global Photon Systems, Inc., and its subsidiary Global West Network, Inc. (collectively "applicants") are authorized to construct the facilities addressed in Application 00-06-002, and described as the Project in the Environmental Impact Report contained in Exhibit 2 of the Application, subject to the terms and conditions set forth below.

2. The findings of State Lands Commission (SLC) contained in Exhibit A of Attachment A are adopted.

3. Applicants shall comply with the mitigation monitoring program adopted by the SLC and attached to this decision as Exhibit B of Attachment A.

4. Applicants shall obtain all necessary permits for the Project and shall file a petition to modify this order to obtain approval for any subsequent changes to the route or construction activities of the Project.

5. Staff of the Commission's Energy Division is directed to file a notice of determination as required by Section 15096(i) of the California Environmental Quality Act guidelines stating that the Commission has considered the Environmental Impact Report prepared by SLC as lead agency.

6. Applicants' request to have the financial information and estimates of the number of customers for its first and fifth years, filed with this application, kept under seal is granted for two years from the effective date of this decision.

During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the Assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

7. If the applicants believe that further protection of the information kept under seal is needed, they may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

8. Applicants shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the date of this order.

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9. This proceeding is closed.

This order becomes effective 30 days from today.

Dated November 21, 2000, at San Francisco, California.

LORETTA M. LYNCH

President

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

CARL W. WOOD

Commissioners

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ATTACHMENT A

**REQUIRED CEQA FINDINGS
GLOBAL WEST FIBER OPTIC CABLE PROJECT**

Note: See CPUC Formal Files for Site Map portion of Attachment A.